EXHIBIT T

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

	.	Chapter 11
	.	
IN RE:	.	Case No. 09-10023 (REG)
	.	
LYONDELL CHEMICAL COMPANY,	.	New York, New York
	.	Thursday, January 7, 2010
Debtors.	.	1:02 p.m.

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TRANSCRIPT OF TELEPHONE CONFERENCE
BEFORE THE HONORABLE ROBERT E. GERBER
CHIEF UNITED STATES BANKRUPTCY JUDGE

APPEARANCES: (Via telephone)

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(Appearances continued)

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(Proceedings commence at 1:02 p.m.)

THE COURT: Hello. This is Robert Gerber. We're here on the phone and in my courtroom with simply me and my chambers staff being here for an on-the-record conference call to address your various discovery disputes, as requested by Mr. Wissner-Gross.

I've got a log indicating many, many people who are on the call. Rather than taking the time to have everyone introducing themselves, I think I'll simply ask people to identify themselves when you speak.

As we are keeping a transcript on this, I would ask that before each of you speak, you identify yourselves so that we can have a transcript that reflects who was speaking.

Mr. Wissner-Gross, you had requested the call if I'm not mistaken.

MR. DAHAN: Your Honor, it's actually Israel Dahan from Cadwalader on behalf of the debtors. I think the debtors and the financing party defendants actually requested the call -- the conference, but I think Mr. Wissner-Gross submitted the first letter, but I think the debtors were the ones who requested the conference.

THE COURT: I see. All right. Well, I'm at your pleasure, folks, as to who would like to speak first. It seems to me, subject to your rights to be heard, that we deal with them issue by issue, although some may obviously bear on

issues that follow.

MR. DAHAN: Your Honor, if I may, I'd be happy to start. Again, Israel Dahan from Cadwalader.

THE COURT: All right. Go ahead, Mr. Dahan.

MR. DAHAN: Thank you. Again, I thank Your Honor for taking the time to address some of these discovery issues. I think, you know, as we've outlined in our letter, you know, on December 11 Your Honor had a conference regarding discovery issues and other scheduling matters related to the 9019 motion.

And I think it's important to note that Your Honor was very clear, and given the fact that it was a 9019 motion and the fact that I'm going to be on a tight schedule, that Your Honor expected discovery to be done in a manner that did not avoid -- that actually avoided breaking the debtors' backs and we'd get done in weeks as opposed to months. I mean, and we took that very seriously.

Despite that, you know, we waited two weeks to receive the Committee's document request, which we didn't get until Christmas Eve. And even more troubling was the fact that we got the request. It dramatically was different than the, quote, "giraffe request" (sic) we got from them at the hearing. Within there was only ten requests, but now we have sixty document requests; and in fact, yesterday got served with another fifteen document requests.

So I only (indiscernible) from the Committee's perspective but, you know, going through those requests what became even more apparent was several of those requests, maybe even many of them, were on topics that Your Honor specifically addressed during that lovely conference through Your Honor's own initiative or whether through clarification points, and still there were those requests and the Committee has still not moved from making those requests and we'll touch on some of those soon, but, you know, that's really been the issue I think.

You know, we're not looking to not be cooperative. I think we outlined on Page 2 of our letter the numerous kinds of documents we've produced. We've given them all the consulting material. We've given them the work product type of documents or (indiscernible).

We've given them anything that I related to the consultants from retention agreements to their reports to, quote, "mapping" type of analysis, sufficient benefactor retained assets and estimated claims information. We've gone through tens of thousands of emails of the internal Cadwalader emails looking for communication between Cadwalader and the financing party defendants and their professionals.

I went back yesterday, made a production of about 11,000 pages of documents reflecting such communications that

touched on settlement of adversary proceedings, so the debtors have been more than cooperative and trying to act in good faith as Your Honor presumably directed us to do in regards to the 9019 motion. And we're continuing to look at documents that may be responsive.

So where we come out is I think, through several (indiscernible) sessions, is a couple remaining issues that can be grouped, but they do relate to several requests. And I think that's where we start, so if we want to start on the issue, then it would be any documents that relate to communications between the debtors and the financing party defendants after December 3rd, which is after the settlement became public and we had the conferences that Your Honor remembers on December 4th.

THE COURT: Just a minute, Mr. Dahan. You've now spoken for five minutes without addressing any of the particular categories in question. With you having done that, I'm going to give Mr. Wissner-Gross the same opportunity to make the preliminary unfocused type of discussion that you just gave me.

MR. WISSNER-GROSS: Your Honor, do you want me to do that now or after Mr. Dahan's --

THE COURT: I was hoping and expecting that we would simply go through the disputed categories and I would rule on the issues that you want me to rule upon, but with Mr. Dahan

having spoken at the length he did talking in generalized terms without any of the disputes to try to educate me as to the background, I'm going to give you that same opportunity if you wish to avail yourself of it.

MR. WISSNER-GROSS: -- much less time. First of all, our goal remains to complete this discovery in weeks. We are confident we can get it done by January 28th if we get the cooperation of the other side.

Secondly, in terms of the number of requests, I think we tried to put in context for Your Honor at summary exhibit for you, Exhibit A to our papers, so I don't think that really is necessary to comment on the issue of the number of requests. I think there are several basic categories.

And we didn't get the debtors' 9019 motion until late in the day on December 23. Less than twenty-four hours later we served our document requests on both the debtors and the financing parties, so I don't think we should be criticized for having done that within less than a day of receipt of the 9019 motion.

And it's our view, as we get into specific requests in discussion, all the things we've asked for are germane to the 9019 and standing issues that are before your Court.

And finally I would note that I do not disagree with Mr. Dahan that at least the debtors endeavored to get us some

of the documents. We have received the consultant reports and some other materials. We received one thing today from a financing party defendant.

I would, just as a factual matter, note that late yesterday we received actually 1,100 pages of emails, not 11,000, and I'm advised by those who quickly reviewed them that none of them bear on land uses or settlement negotiations.

So with that, Your Honor, I would throw it back to Mr. Dahan on the issue of the conference.

THE COURT: All right. Mr. Dahan, first category, communications after December 3rd between the debtors and the financing party defendants who are settling.

MR. DAHAN: Yes. Thank you, Your Honor. And again, I apologize for -- I thought that I was just going to give Your Honor a little background, but that's fine, I'll address that.

On this category of documents we have two points which we outline in our letter, Your Honor. The first has to do with relevance. You know, from our perspective we believe that once the settlement agreement was announced, we don't see that to the extent the parties were going through, putting together pads of paper of the actual terms and ultimately then became attached to the motion which Your Honor has in front of them, that, you know, the back and

forth of people sending drafts of what the language should be is relevant to Your Honor deciding whether the settlement is fair and reasonable.

The principal terms of the settlement agreement are the same, as well as presented by Mr. Davis to the Court, unless he has changed them there. So the draft settlement agreement we don't think, you know, is relevant and for purposes of the 9019 motion as well, you know, us drafting, you know, putting together drafts of our 9019 papers, we don't see why the Committee should be, you know, seeing that sort of material.

But more fundamentally, Your Honor, we think that once there became an agreement in principle between the parties, and therefore there became this common goal necessary between the debtors and the financing party defendants to getting approval of the settlement and the 9019 motion, we do think that there was a common interest privilege that should protect the communication regarding settlement and the 9019 motion.

You know, by way of example, Your Honor, I mean, I'm sure Your Honor could appreciate that we will likely want to coordinate with the financing party defendants about the hearing and about how we wanted to approach the hearing, and to assume that all those types of communications are going to be open to the Committee understanding our strategy or

coordination.

Again, we don't see how that's germane to Your Honor deciding any of the seven factors that Your Honor needs to go through post-December 3rd. So that's really the reason for withholding those documents. We're more than happy to produce any of the relevant documents prior to December 3rd, it's just strictly a timing issue, Your Honor.

THE COURT: All right. Mr. Wissner-Gross.

MR. WISSNER-GROSS: Your Honor, let me start by briefly commenting on the last point, the common interest privilege. We cited some cases in our letter to Your Honor and I think it couldn't be more crystal clear that the common interest privilege, which is a very limited privilege, has absolutely no application here in terms of the communications between the debtors, who said they're acting on behalf of the estate which was at first a financing party defendant and any of those communications with the financing party defendant.

On December 11th Your Honor said that we should be getting all communications irrespective of date relating to any communications concerning the topic of settlement, at minimum between the debtors and the financing party defendants. So we think that certainly a minimum up through December 23, when it appears that the settlement agreement -- proposed settlement agreement was executed. We're clearly entitled to all those communications.

I would note further that in court on December 4th Mr. Davis expressed among the conditions to the effectuation of this settlement of the Committee's claims a resolution of intercreditor disputes and made clear that he utilized that as some sort of a condition precedent to the settlement that was reached with the finance party defendant.

We haven't got any of the drafts of their settlement papers, we haven't seen -- we don't know if there are term sheets and so forth. We don't know whether some of the usually conceded conditions (indiscernible) was part of the original draft, part of the term sheet. We don't know what happened in terms of the development of the proposed papers as it went through ultimately execution. And moreover, we don't know what the debtors' 9019 drafts look like, whether the finance party defendants provided input that -- before they ultimately signed the settlement agreement, that impacted certain terms and conditions of the settlement.

So from a common interest privilege perspective, we don't think there is a scintilla of a legal basis for an application of the common interest privilege to any of these communication.

And then with respect to the 9019 issues more generally, we think it's absolutely relevant that we be able to get access to all of these communications and then work through the process of attempting to document the ultimate

proposed settlement.

As to communications between them after the settlement agreement was executed on December 23, we don't think that any common interest privilege attaches to those communications. The case law basically says that you look to invoke the common interest privilege when it's only maybe a co-defendant or somebody have actually a common legal interest that's much more circumscribed than as suggested by the other side.

And to the extent there are any communications after December 23, we think those are fair game as well, to the extent that they relate to 9019 issues.

And finally, Your Honor, in our draft, 6.3 of the settlement agreement, we've noted this in our papers, for whatever reason, the parties have elected -- indicated that the settlement agreement superceded not only all prior oral agreement, but any representation to the Court, including that on December 4th, as to the contents of the agreement.

So for these reasons, Your Honor, we think that this one is something that the defendant -- excuse me, the defendant as well as the debtors should be directed to produce these communications.

THE COURT: Mr. Dahan, I'll permit reply if it's very brief.

MR. DAHAN: Yes, Your Honor. I just wanted to know

-- I think we have the financing party defendants' counsel on the phone and they may want to weigh on the issue as well.

MR. SIMES: Your Honor, it's Michael Simes from Mayer Brown on behalf of Merrill Lynch and for certain of the issues today on behalf of the rest of the financing party defendant group.

As we mentioned in the --

THE COURT: I'll allow you to speak now, Mr. Simes, but next time if you're joining in with somebody who allied in interest I want you to speak up then so that I don't have to then decide whether I need your opponent still another opportunity to be heard.

MR. SIMES: Understood, Your Honor, and on that issue, as we did in the letter, we simply join in the debtors' argument and stress the point that was made with respect to communication that will be held in connection with preparing for the 9019 hearing. It seems grossly unfair to allow the Committee discovery into the inner workings of preparing for a 9019 settlement hearing in which the legal interests of both the debtors and the financing party defendants are clearly aligned.

THE COURT: All right. Mr. Dahan, how is your opportunity for any reply.

MR. DAHAN: Thank you, Your Honor. The only point I would add, Your Honor, is I think Your Honor will find that

the financing party defendants are, in fact, submitting a joinder motion to our 9019 motion. I do think that that, you know, that there is a joint and common interest here with -- between the two sides of getting the 9019 approved.

And I think that a lot of the different things that Mr. Wissner-Gross mentioned seemed to me to be a lot of speculation but the two main things went on between the 4th and the 23rd, other than just the parties just putting together the actual terms of the agreement, which would be natural, that take place between the announcement and the filing date of the motion.

So, you know, without reiterating my point, you know, I think those are, you know, just our views with respect to any relevancy and the common interest.

THE COURT: All right. Gentleman, the objection to the production of the communications between the debtors and the financing party defendants after December 3rd is overruled and the debtors will produce any communications of that character.

The objections fall into two essential grounds, one being relevance and one being the common interest defense. As I ruled previously, I need to have total comfort that the settlement was at arms length and wasn't collusive. And communications between the debtors and the financing party defendants at any time, especially since the -- certain of

the definitive terms of the agreement came into being after that time, are at least potentially relevant.

As far as common interest goes, until and unless I approve this settlement, the estate, now represented by the debtors or on whose behalf the debtors propose to settle, and the financing party defendants are adverse. And if and to the extent that the debtor find it in its -- to its convenience to be making a settlement with the financing party defendants, which will be determined to be either appropriate or inappropriate after the hearing, that is not in the nature of defending a common interest, but it's in achieving your private commercial objectives.

Accordingly, I'm ruling that with the debtors and the Creditors' Committee both representing the estate in their various ways, in a litigation against the financing party defendants I am not going to recognize a common defense privilege.

Next issue.

MR. DAHAN: Okay. Thank you, Your Honor. The next issue relates to communication between the debtors and the non-settling defendants. Your Honor will recall at the hearing Your Honor limited the Committee's discovery to document production and questioning with respect to communication between the debtors and the settling defendants or their professionals with respect to settlement or the

Creditors' Committee.

We honestly have no issue producing such documents and in fact we've already produced many such documents to the extent they exist. The problem here is that the Committee has now served several requests that would require us to produce documents that rebut communications between the debtors and the non-settling defendants, assuming that none of the financing party defendants were on those communications.

For instance, just straight communications between the debtors and Access or their counsel or any of the (indiscernible) and their counsel. We believe that that is beyond what Your Honor required. We also don't see how any of that is relevant. Your Honor knows that none of those -- the non-settling defendants are not parties to the settlement agreement, therefore the issue of whether this was at arms length with the financing party defendants is not relevant to whether there were communications at any point between January and December between the debtors and strictly with any of the non-settling defendants.

And more importantly, Your Honor, at the hearing itself when Your Honor made this ruling of strictly limiting it to communication between debtors and settling defendants, at no point did the Committee, you know, raise this as an issue, raise this as a clarification, and what that's done

is, you know, we've been through, you know, searching, you know, tens of thousands of documents and collecting them and putting the search terms related to any domain name that may reflect to financing party defendants. To now have to do a whole second brand new search of our files over a year period over countless custodians of now another fifteen to twenty domain names looking for such types of communication, again, aside from just extremely burdensome, you know, it just, you know, would be costly; and again, we just don't think that they're relevant, especially given Your Honor's instruction at the December 11th conference.

THE COURT: All right. Before I give Mr. Wissner-Gross a chance to respond, do any of the financing party defendant counsel need -- see a need to supplement what Mr. Dahan said?

MR. SIMES: Yes, Your Honor. It's Michael Simes from Mayer Brown again.

I just want to note before responding that we've been alerted that CourtCall apparently has Mr. Huebner on mute and he may wish to be heard on certain of these issues, so if CourtCall could either unmute or get in touch with Mr. Huebner at 212-450-4099 to remedy that, I certainly never wished to have Mr. Huebner on mute.

THE COURT: All right. I'm authorizing and requesting CourtCall to unmute Mr. Huebner and I'm confident

that I can trust him to stay quiet if he stays off mute and doesn't wish to speak.

MR. SIMES: With respect to this issue on communications with non-settling defendants, Your Honor, we echo obviously all the arguments that Mr. Dahan made with respect to what we believe this Court ruled very clearly on December 11th.

On that, with respect to communications between settling defendants and non-settling defendants in this matter, there is very clearly a common interest to be protected. We were all, during the course of this litigation, defending against the same or very similar claims.

As Your Honor knows, some of the defendants were put together in one group as the financing party defendants, but we're working in concert, at Your Honor's direction, with the directors and officers; and in certain instances, with the Access defendants in preparing the defense of these claims, in preparing expert reports, in sharing many of the burdens.

The extent of their communication, especially with respect to the merit of the Committee's claim, which is one-half of what the Committee is requesting here, with the non-settling defendants will clearly number in the thousands. It was made clear to the Committee at the outset that this was not going to be part of our search because it was not what

the Court ordered at the December 11th hearing and we believe that none of the communications between those defendants with respect to defending the claims would be discoverable under the common interest privilege.

Beyond that, to the extent that the Committee is seeking communications with respect to the settlement, well, I don't believe, on behalf of Merrill, that there are any and I don't believe that any of the non-settling defendants were part of these communications or even knew about the settlement until the morning of December 4th when everybody else did.

The fact is that going back to search these domain names and, as Mr. Dahan said, review again additional thousands of documents to determine whether or not that's case is just burdensome in the context of the short time frame we have.

THE COURT: All right. Mr. Wissner-Gross.

(Pause in proceedings.)

THE COURT: Mr. Wissner-Gross?

MR. WISSNER-GROSS: Yes, Your Honor. I think there really are two separate issues here: one, communication that the debtors had with the non-settling defendants; and secondly, based on what Mr. Simes just said, I gather just internal communications between and among the various defendants.

As to the former, which is really our focus, in Mr. Weisfelner's letter to you of December 10 he specifically cited several instances of what we believe -- and I was present at a lot of these depositions so a lot of this information frankly came from me, Your Honor -- an observation that the defendant -- or excuse me, the debtors who are defending a number of the Lyondell party acquisitions seem to have almost a collusive arrangement at the deposition in the way their defense was handled.

And I think our real focus for purposes of this topic for the 9019 is to make sure that we have all communications by debtors, and it's really going to mean debtors' counsel, with counsel for the non-settling defendants with respect to any of the depositions that occurred, whether in 2004 discovery or the adversary proceeding.

And I think we have circumscribed the universe of the focus to communications by debtors and really debtors' counsel with the counsel to the D's and O's and to the Access defendants tied to depositions, I think that that substantially shrinks the universe of what we're focusing on. It's very targeted and everybody knows what the playing field is that we're talking about. And that really -- I mean, our goal here is to make sure that we develop a full record on the issue of, among others, of collusion and our view of the

case is the way we can best establish that, Your Honor, is to show a pattern that existed from the outset of Rule 2004 discovery, so that's really our focus.

We're not interested, per se, in the communications that Cadwalader may have had with coverage counsel in terms of insurance issues. We're not interested in -- other than the documents that are really targeted to advance record on the issue of collusion on this particular point, and whatever this was unlikely end.

As to the communications in and amongst the financing party defendant, I did have a meet and confer a few days with the counsel for financing party defendants and at that time they actually didn't advance the argument that the common interest privilege applied to all of their communications with -- actually their position was that we were stuck with the D's and O's and the Access defendants. The only common interest privilege that applied was during the period when they were comparing expert report and arguably working through it together in connection with that report.

But in the interest of expedition, Your Honor, we're prepared to forego at this time questing for any communications with any of the non-settling defendants other than those where the debtors and debtors' counsel participated, which I think should satisfy Mr. Simes's second

point.

Our focus on this is simply to make sure we have a full record on the issue we think is -- that pertains to questions of collusion and arms length issues.

THE COURT: All right. Mr. Dahan, I'll take brief reply.

MR. DAHAN: Thank you, Your Honor. Okay. Two quick points. One, you know, I think what Mr. Wissner-Gross fails to understand is it's not like we could just, you know, find a document that relates to a deposition. We would have to go and search all those documents with those domain names over time, eventually maybe only produce, to the extent there were any -- they reflect the communication with counsel for Access about a deposition, but we're going to end up having to get hits on thousands of documents to the extent there were communications on D&O coverage, on anything else.

And again, Your Honor, we just do not see what collusion, and especially since at no point during any of those deposition did Mr. Wissner-Gross ever raise an issue with the debtors that that's how we were behaving inappropriately or any point in time during the extensive adversary discovery, and I totally disagree with the way he's characterizing our behavior at these depositions.

But therefore, Your Honor, we do think that the appropriate scope here, which we have produced and which we

will gladly produce our communications that we may have had with the settling defendants on the issue of settlement or adversary proceeding, including at deposition. So that where we believe the appropriate scope is, Your Honor.

THE COURT: All right. Everybody sit for a second.

Okay. With respect to this second category, communications with non-settling defendants, the objection is sustained except to the extent that the debtors shared with any of the non-settling defendants any views the debtors had as to the strengths of the claims against settling defendants.

Putting it another way, if the debtors shared with any non-settling defendants debtor views as to the strengths or weaknesses of claims against the settling defendants, or shared with non-settling defendants any views the debtors had as to the desirability of the settlement, that's fair game.

Other than that, however, the objection is sustained.

The requested discovery in this area is too remote and it raises the risk, if not the certainty, that the Creditors' Committee would get access to inappropriate disclosure into the various defendants' views concerning the strengths and weakness of claims that even as we're now talking about it, the Committee is still going to be able to pursue against the non-settling defendants.

And at the risk of stating the obvious, unlike my prior ruling on common interest attorney/client privilege, all defendants, at least until I've approved this settlement, have a common interest in the defense of claims that are being brought by the estate, whether brought by the Creditors' Committee or whether they could ultimately be brought in whole or in part by the debtors.

Issue number three, that's settlement negotiations between the financing party defendants and the Creditors' Committee?

MR. WISSNER-GROSS: Your Honor, it's Mr. Wissner-Gross. Would you like me to start out on this one?

THE COURT: It's all right with me.

MR. WISSNER-GROSS: Okay. Your Honor, this issue pertains to a subject that was briefly addressed on December 11th and Mr. Weisfelner had began to address it in court within his December 10th letter and it's something that we feel quite strongly bears, among other basis in terms of 9019, to whether the settlement was arms length, whether the debtor has properly discharged their fiduciary duty in terms of finding out what actually the state of play was in terms of any settlement negotiation between the Committee and the bridge lenders, which were occurring; and as to other relationships to the standing in 9019 issues.

Based on Mr. Simes's most recent letter to the Court

that we got just before the call, it appears that -- from the bridge lenders' perspective, it appears that they are prepared to explore that subject in terms of Mr. Weisfelner's communications of it. In fact, they stated probably more than we have as to what they're due as to what the status of the negotiations were.

We've been careful in our submissions to Your Honor to not get into the specifics of what the offer was at the time, the demand, and what the position was that was communicated to us or to Mr. Weisfelner more specifically by Mr. Trust and Mr. Huebner.

But we think that that is all quite relevant ultimately to Your Honor's assessment as to whether the ultimate proposed settlement is within the lowest range of possible reasonableness and particularly given that as I think is apparent in our papers, the view of the Committee is that the Committee would have been able to essentially consummate a separate settlement with the bridge lenders alone that was far, far better than the proposed settlement by the debtors to resolve all claims against the financing party defendants.

And to this day, Your Honor, I really haven't gotten a direct answer from the debtors or their counsel as to whether they're even aware of Mr. Weisfelner's separate negotiations.

I gather from Mr. Simes's letter there are two basic fall-back arguments that they have as to why we nevertheless shouldn't be able to probe further on that discovery. First, I believe that they may fill out some residual 408 argument. In our letter to Your Honor that we submitted on January 6th we wanted to fairly extend some discussion as to (indiscernible) new application here as to our communications with the bridge lenders on the subject.

But the other point is that it really is a privilege issue, and that is that from the brief exchange you heard in court on December 11th, it appears that Mr. Trust and Mr. Huebner have a different recollection as to what the state of play was as to the communications. And my understanding, Your Honor, is that most of those communication were done verbally and that there wouldn't necessarily be a paper trail or extensive paper trail reflecting Mr. Weisfelner's proposal of what the position was of the Committee and what Mr. Trust told him, acting on behalf of the bridge lenders, as to the response of the bridge lenders.

Although Mr. Simes began to intimate in his letter today in which he held that we've shared, it's our view that this issue is really relevant to Your Honor's assessment whether this is a fair and reasonable settlement on our grounds and to the extent that Mr. Weisfelner's proposal was conveyed, for example, by Mr. Trust to his client, or --

Merrill Lynch or to Bank of America, the parent of Merrill Lynch, and there was a factual recitation of what -- in that communication.

We think that that is discoverable because it seems to us that what we're hearing here is a dispute as to what was actually discussed between and among Mr. Weisfelner and Mr. Trust and Mr. Huebner.

So we're not looking for any privileged communications. We recognize that there are privileged communications between Mr. Trust, Mr. Huebner, and respective client, but we want to make sure that we develop the record on this, which we think is relevant to Your Honor's consideration of the overall settlement, that at least we have the benefit of an accurate factual record.

I noted that Mr. Simes has offered to take Mr. Weisfelner's deposition. We think that if we have at least limited discovery as to the fax that were shared back and forth between Mr. Weisfelner and Mr. Trust and Mr. Huebner, that we'll get to the bottom of this issue fairly quickly. Your Honor will have a hopefully clear record as to what the actual status was of the separate bridge negotiations, which were occurring, Your Honor, right on the eve of the second day of meetings.

And given the fact that the subject of the status of, assume for argument's sake, the potential assignment of

the (indiscernible) position ended up as part of the ultimate settlement package that the debtors worked out on December 4 with the finance party defendant and -- surprisingly was interest us, the bridge lenders ended up getting equity and warrants worth about eight percent of the bridge loan.

We think that, for the reasons we set in our paper, is that this is something that really needs to be included as part of Your Honor's overall assessment as to whether the settlement was arms length, whether it was fair and equitable, and ultimately whether, even if there's standing that's found by Your Honor, whether it meets the lowest bounds of the ends of reasonableness.

THE COURT: Mr. Wissner-Gross, Mr. Simes, in his letter, says that if we're talking about communications between the Committee and the bridge lenders' counsel, you're going to know about them better than anybody, so what's the point of requiring disclosure on it?

Is it your contention that because people have different memories of that, that that's why disclosure is necessary? Because when I read the Simes letter, I said, so why are people arguing about this. You guys seem to be arguing about production of documents as to which, in theory, each of you should have the same documents.

MR. WISSNER-GROSS: Well, I don't -- I think that's probably not the case, Your Honor. My understanding is that

these communications were done orally, primarily with Mr. Weisfelner having a series of discussions with Mr. Trust. In fact, if I may be permitted to just explain it further, Your Honor, just before Thanksgiving there was a meeting in our office that Mr. Weisfelner was present with several counsel for the bridge lenders, and then there was a separate meeting he had with Mr. Trust and Mr. Sarnes that followed the initial meeting, and then he had a series of telephone discussions primarily with Mr. Trust over the period of the next several days, but also to a certain extent with Mr. Huebner.

And I'm not aware that the substance of those communications reflected in emails back and forth between the lawyers who had those active extensive detailed discussions and my concern is that Mr. Weisfelner has a distinct recollection of what happened, Mr. Trust may have a different recollection, and to the extent that Mr. Trust, just using Mr. Trust as an example, who had -- we saw from his time record that he submitted to Court and obviously identified the meeting as something that actually occurred, if he communicated back to his client I had a meeting with Mr. Weisfelner and here's what he said during the course of the meeting, he said A, B, C, and D; and then he had a subsequent phone call to Mr. Weisfelner before -- let's assume he reported that to his clients, who are the other bridge

lenders, and said, Mr. Weisfelner has made the following proposal, he said A, B, and C will settle the case against the bridge lenders; and Mr. Trust says, I said no such thing or Mr. Weisfelner said no such thing.

It seems to me that, under general rules in terms of privilege, that to the extent that Mr. Trust communicated, for example, to his client the facts of what Mr. Weisfelner said, that that relaying of a conveyance of Mr. Weisfelner's communication is not privileged. I'm trying to avoid a big dispute between the counsel who were there as to what actually transpired.

THE COURT: All right.

MR. SIMES: This is Michael Simes from Mayer Brown.

I want to be quite brief on this, to cut through it all. I think our position is pretty well set out in our letter. They've asked for three different types of communications here: those with the debtors reflecting communications about whatever settlement discussion occurred between financing party defendants and the Committee; communications with the Committee about settlement discussions that occurred with the Committee; and then most remarkably, communications with our clients with respect to those settlement discussions.

And just to be clear, just because Mr. Wissner-Gross says that these were negotiations does not make it so, and I

want to make clear for the record that we've got no problem producing documents to the extent they exist, communications with the debtors about such discussions with the Committee. I don't know whether they exist, but I think if they do, they would be told they would be captured in response to other of the Committee's requests, not this one.

With respect to communications with the Committee, I think Your Honor already applied the primary (indiscernible) that they have these communications. You know, to the extent that Mr. Weisfelner has communications with me or Mr. Trust, he knows better than anybody what those communications were. We know what those communications were.

And as we said in the letter, and one of the reasons why we, you know, do not really mention the 408 issue is that we thought we had made some progress and Mr. Wissner-Gross's letter of yesterday where they sort of admitted that the only settlement offer that was ever made in connection with any discussions that they had with (indiscernible) counsel was made by the Committee to us. That's it.

So with regard to 408, to the extent that Mr. Weisfelner wants to disclose to the Court and to the world what his settlement offer was, we have no objection, he's more than welcome to do that. Just as we're more than happy to disclose what our response was to that offer.

And I want to finally make clear that the dispute,

such as it is, over the status of settlement negotiations or discussions that Mr. Wissner-Gross mentioned is not as to whether or not meetings occurred. No one ever conceded that meetings occurred. That's what happened in disputed cases in advance of trial.

What was disputed was the characterization that Mr. Weisfelner used in his December 10th letter, that he was on the verge of a settlement, that settlement was under consideration, that the bridge lender counsel had put forward a specific settlement structure proposal; that's what was being disputed, not the fact that meetings occurred.

And so to the extent that Mr. Weisfelner and Mr. Wissner-Gross want to ask questions about his own settlement proposal, I think we're probably happy to answer them. I will note for the record that of the ten depositions that had been noticed by the Committee, and actually the nineteen that were initially noticed, they chose not to notice either Mr. Trust or Mr. Huebner or myself, the people they say were involved in these conversations, but if they want to ask those questions, by all means they can ask those questions.

The real heart of the dispute here is whether or not they get attorney/client communications with respect to their settlement proposal. And I think Mr. Wissner-Gross would acknowledge that to the extent any communications went beyond a mere recitation of Mr. Weisfelner's offer, there moot. And

to the extent that they only include a mere recitation of Mr. Weisfelner's offer, again, the committee already has that information easily at its disposal. They've already conveyed the attorney/client relationship to require communications between us and our client with respect to those -- that settlement proposal (indiscernible).

THE COURT: All right.

MR. WISSNER-GROSS: Your Honor, may I be briefly heard in reply?

THE COURT: Yes.

MR. HUEBNER: I'm sorry. Can I just go before you for a second?

MR. WISSNER-GROSS: I'm sorry, Marshall. Absolutely.

MR. HUEBNER: Good afternoon, Your Honor. It appears that I've been taken off mute.

THE COURT: Go ahead.

MR. HUEBNER: Can you hear me okay?

THE COURT: Uh-huh. Fine.

MR. HUEBNER: Your Honor, this is more than a little bit I think of a tempest in a teacup and, frankly, we think, as we said at the last hearing, this is all -- it's protected by 408 and we're genuinely stunned to have received references to it in the letter.

However, we have nothing to hide and, in fact, we're

very willing to tell the story. Given that I think Mr. Wissner-Gross keeps sort of saying, there aren't any documents here. There was a single meeting and clearly Mr. Weisfelner has certain recollection of the nature of the proffer that Mr. Wissner-Gross used the phrase about twenty minutes ago about the settlement that the Committee, quote, "would have been able" to do with the bridge lenders.

I just want to be very clear that that is just -- there was no bridge lender that had to do this remotely like that. I think we're going to need Mr. Weisfelner's deposition here because this is really about Mr. Weisfelner's perception of what he thinks the progress was, and everyone else's perception on the other hand, and there really is nobody but Mr. Weisfelner on the one hand and everybody else on the other.

And Mr. Wissner-Gross is trying to get unbelievably inner sanctum stuff from us, including our attorney/client communications, but then say, oh, no, no, we're not going to need, you know, a deposition here. And we don't think that's quite right. If there's going to be inquiry into -- and argue these highly preliminary DOAs went nowhere, negotiations between the bridge lenders and Mr. Weisfelner, we're going to need a deposition because it's our view that those conversation were few and brief and not productive. And if Mr. Weisfelner is the only holder of this information,

belief to the contrary, I want to hear it under oath under penalty of perjury.

THE COURT: All right.

MR. WISSNER-GROSS: Judge, may I respond briefly now?

THE COURT: Yes.

MR. WISSNER-GROSS: I want to say for the record, and Mr. Weisfelner is here with me in the room and he actually is not stepping up to comment, but I will tell you that Mr. Weisfelner had a completely different understanding and recollection as to the facts of negotiation. He stands by the statements on December 10th and I think the comments made by Mr. Huebner, Mr. Simes has to establish those negotiations, how far advanced they were, and whether there were, in fact, bilateral proposals is clearly a fact in dispute.

And I'm trying, in my approach, to avoid depositions of lawyers, although it's clear that ultimately some discovery of lawyers will have to take place, but, Your Honor, for argument's sake, that in fact the bridge lenders had said to Mr. Weisfelner through counsel, you can have all the bridge loans, you can have all rights to them, the only issue is whether we have to pay you something more than that, and then a few days later while those discussions are still going on, Mr. Weisfelner, to his amazement, hears a

settlement was reached with multiple financing party defendants and even more to his amazement, that the bridge lenders who were out of the money, who he thought were going to assign at a minimum their rights to bridge loan for getting eight cents on the dollar, that the bridge loan was part of this global settlement.

Our view is that this couldn't be more relevant to determining whether it was an arms length settlement, it was collusive, and ultimately whether the 300-million-dollar proposed settlement is far -- you know, if it's well below the possible regional settlement taking into account that Mr. Weisfelner thought that he was close to reaching a deal with the bridge lenders that would have meant standing on a separate base far better than the debtors' proposed settlement with all the financing party defendants.

THE COURT: All right. Folks, for ease in understanding my ruling, pull out Mr. Simes's letter, Page 4, top of the page, which has three stated categories.

First category, communications between the bridge lenders or their counsel and the debtors or their counsel, with respect to settlement negotiations between the bridge lenders and the Committee, that subcategory will be produced.

I sense from the paragraphs that immediately follows the three numbered subcategories there is no objection, and even if there had been an objection, it would have been

overruled.

Second category, communications between counsel for certain bridge lenders and Committee counsel. As the discussion has fleshed out, it appears unlikely that there are any written documents that passed between the bridge lenders and Committee counsel. What we're really talking about is notes of oral communications that might have been taken by the recipient or the transmitter of whatever was said orally.

In that connection, subject to the reciprocal requirement that I'm going to impose in a minute, any such notes will be produced to the extent that they are what Mr. Simes articulated as a mere recitation of what was said between Mr. Weisfelner and the listener on the bridge lender side, or by the bridge lender speaker to Mr. Weisfelner.

And when I say Mr. Weisfelner, I sense that it's mainly Mr. Weisfelner, but if it's anybody else allied with Mr. Weisfelner it's the same principle.

For the avoidance of doubt, I am not authorizing any attorney mental impressions that were written down at the same time that the substance of the proposal was made or the substance of the response to that proposal was transmitted back; and I am not authorizing any communication of any type between the attorney and his client or her client.

So this is an implementation of the principle that

what an attorney hears from a non-privileged party is not privileged, and what an attorney may -- actually, I'm getting into the third category, but the principles are going to remain the same. Legal advice or mental impressions will not be produced and can be redacted and should be redacted. But to the extent any notes say in words or substance the specifics of what Mr. Weisfelner said to the bridge lender lawyer, or what the bridge lender lawyer said to Mr. Weisfelner, that will be produced vis-a-vis category number two.

In addition, my order authorized in the production of that by or on behalf of the bridge lenders is conditional upon reciprocal discovery of the same character being provided by Mr. Weisfelner and the Creditors' Committee to the bridge lender group.

Category number three is going to be resolved under the same principles. Now we're talking about what counsel for the bridge lenders says to its clients with respect to what Mr. Weisfelner said to them in the way of a proposal on behalf of the committee.

To the extent, if any, to which any bridge lender lawyer communicated the Weisfelner proposal to a bridge lender party, the bare bones of the mere recitation of what the lawyer said about what Weisfelner said is fair game and will be produced. But to the extent that any attorney mental

impressions concerning what Mr. Weisfelner said were conveyed, or any legal advice with respect to what Mr. Weisfelner proposed was conveyed, including most obviously whether such proposal should be accepted or rejected, or what might be appropriate or inappropriate vis-a-vis any counterproposal or whether any counterproposal should be made shall remain fully protected.

And, as I said in connection with category two, the duty to produce under category three will likewise be conditional upon reciprocal discovery of the same nature, if and to the extent Mr. Weisfelner communicated anything about what he said to the bridge lender lawyer, or what the bridge lender lawyer said to him, to his own folks.

Okay. Next issue. I think we're up to number four on Mr. Wissner-Gross's list, communications between the first lienholders and the bridge lenders. Who wants to take the lead on that?

MR. SIMES: Your Honor, it's Michael Simes from Mayer Brown. I'd be happy to, on behalf of the financing party defendants.

I think we can be pretty brief on this. The Committee acknowledges with respect to this reflects for these types of communications that this goes beyond what the Court authorized at the December 11th hearing in its ruling after lengthy argument and deliberation, findings from the

Court in its December 10th letter that it was going to request this type of discovery.

Mr. Weisfelner alluded to this type of discovery during the course of his oral argument during the December 11th hearing and these types of discovery requests were in their draft discovery request that Mr. Dahan referred to earlier. They were provided to us at the outset of the December 11th hearing.

Your Honor after that argument came back and made a specific ruling that there would not be authorization of communications between the settling defendants and/or their professionals. Just to make sure it was clear, Mr. Weisfelner asked again after Your Honor's ruling for clarification as to whether or not he could get communications between the bridge lenders and the first lienholders and Your Honor once again said no.

Your Honor did say not at this time, which is what has left the door open for the Committee to come back and essentially move for reconsideration on this issue, but I think it's important to note the Committee has not come back with any argument that they did not raise previously as to why this is relevant. They've flagged all of these arguments before and Your Honor has already ruled.

I think it's pretty clear that the discussions between the first lien and the bridge holders with respect to

intercreditor disputes, which amount to discussions between constituents of this debtor and to negotiation are not at all relevant to determining whether or not the settlement of the Committee's claims is reasonable.

And I know that others on the financing party defendant side may have additional things to say about that, so I'll stop and defer to anyone else who seeks to jump in at this time.

THE COURT: All right. Anyone?

UNIDENTIFIED: -- I'll just have another one or two minutes at the very most.

Just as a reminder, which I know everybody on the phone knows, a 9019 hearing is only about the debtors' business judgment and is only about the party -- the settlement under the last stage perspective.

Normally no third party discovery of any time is allowed. Here the Committee has raised, you know, kind of allusions or suggestions of collusion and so Your Honor ruled quite thoroughly after I think a six-hour hearing on the 11th that the Committee could get basically most communications relating to the settlement that were with or included the debtors. I mean, clearly the debtors had to have been involved in it to show if there was any sort of collusion.

Your Honor was totally clear because we're, remember, being very asymmetrically treated here. The

Committee is being given access to all the debtors' expert reports, Judge Conrad, the next, and we're not being given any of it, so if this thing starts up again, you know, we're in a very initial position. But this is the one area which is, you know, discussion among the defendants where I think there really can't be any question at all that it, A, has no relevance to the debtors' business judgment or collusion; or B -- and B is clearly protected by common interest, as I think Your Honor ruled about an hour ago on these issues.

So to say now that they can come back and ask for the fourth time to get communication between and among only the defendants that did not involve the debtors, certainly no new evidence but rather, you know, some new theory, we think would just blow fairness completely out of the water, as well as grossly violated even the expectation of privilege that we think are contrary to Mr. Wissner-Gross's recitation is quite well in trying case law and if Your Honor should want it, I'm happy to provide it, I'm not going to burden you unless asked for. I'm happy to give you citations for cases in the Southern District that make it clear the common interest without a question be compliant to this situation.

THE COURT: All right. Mr. Wissner-Gross, any final reply?

MR. WISSNER-GROSS: Yes, Your Honor. If I could briefly address this.

I think that, first of all, Your Honor did rule that -- on December 11th that at that time you were not going to permit discovery into this and I think your language on this was you were willing to give it a fresh look. Mr. Weisfelner actually did not have a chance to develop on the record all the points he wanted to make, so I could briefly make a couple of points that I think are key here.

First of all, I think the real issue here, the driving point here, is that there were intercreditor negotiations to which they were adverse, meaning that the bridge lenders were out of the money to -- if we won phase one, who could benefit. And there were negotiations with the first-in lenders.

On the other hand, if the financing party defendants, for argument sake, prevailed in phase one, actually, in terms of intercreditor dispute, the bridge lenders, they didn't get anything. (Indiscernible) and their position was just as bad vis-a-vis the first-in lenders.

So what happened here as a result of the debtors injecting themselves we think inappropriately into discussions of settlement at the time it did was to effectively enhance or give a free ride or free pass to the bridge lenders by virtue of the debtors' condition. They've stated under several points that they made as part of the settlement negotiations with the finance party defendant that

the two groups deliver a resolution of intercreditor dispute.

So I think what this comes back to is the same point that we addressed with respect to Mr. Weisfelner's negotiations with the bridge lenders. The thing that is really driving our need to examine this issue is how did the bridge lenders end up getting a settlement, which we didn't participate in the negotiations with the financing -- first-in lenders or the debtors, eight cents on the dollar for their $8 billion out of the money, bridge loans, when we thought we were very close to getting that for them and more on a stand-alone basis.

So I think the point here is that, no, we're not interested in their months of discussions between them. We're not interested in most of what they had to deal with on a separate basis. But we are keenly interested in understanding what happened in their intercreditor negotiations where they were adverse to each other and they had completely diametrically opposed positions where, as a result of the debtors' intrusion into the settlement process, the bridge lenders ended up taking for themselves what they were prepared, from our perspective, and give to us on a stand-alone basis.

So I appreciate, Your Honor, that -- and, Your Honor, Mr. Weisfelner just reminded me that although that was stated in court on December 4th that there was this

settlement of the intercreditor issues, we're not aware of any disclosure when we were promised to get all the disclosure of what those actual terms were which, according to Mr. Davis on December 4, were a condition of proceeding and integral to any resolution of the debtors' efforts to settle with the financing party defendants.

So we don't want broad expanse of discovery, but we have maintained that I think it's germane to the 9019 issues. It will be germane to understanding whether the settlement is below the bounds of reasonableness, and mindful of the fact Your Honor has indicated that, you know, you want to keep discovery truncated on subjects like this. We think at least some ability to probe on this content is warranted.

THE COURT: All right.

MR. SIMES: Michael Simes from Mayer Brown. If I could just speak for a minute, a brief reply on this.

Mr. Wissner-Gross says an awful lot of things in there that are factually I think inaccurate. I won't go through all of them, but what sticks out is the idea that bridge lenders were out of the money; two, that the settlement is eight percent of the eight-million-dollar bridge debt, and several other things.

But beyond that, cutting through everything Mr. Wissner-Gross said, this comes down to whether or not these communications are actually relevant to determining whether

the settlement of the Committee's action in the complaint that the Committee filed is reasonable. And I have not heard one thing from Mr. Wissner-Gross except conclusory statements of that, why they think they're relevant, as to what about these communications actually relevant to Your Honor's determination and to whether or not the settlement the Committee claims is reasonable for purposes of Rule 9019.

So at this point I'd like to make those statements and yield the floor to anyone else who wants to follow up.

MR. ZENSKY: Your Honor, it's David Zensky of Akin, Gump, Strauss, Hauer & Feld. May I be heard for a moment on this issue?

THE COURT: Yes, briefly.

MR. ZENSKY: Yes, thank you. I was not going to speak, Your Honor, because I of course adopted and agree with the comments that Mr. Simes made earlier until I heard Mr. Wissner-Gross speak.

All I would like to add is, Your Honor, that again, the issue to be tried here is the reasonableness of the personal transfer claims, not the reasonableness of whatever resolution was reached of plan issues between the senior lenders and the bridge lenders. And letting one creditor constituency pry into private negotiations between two other creditor constituencies about how they resolve their plan issues I think would be highly unusual and bad policy to set

for bankruptcy practice generally.

THE COURT: All right.

MR. HUEBNER: Your Honor, literally fifteen seconds for Marshall Huebner.

I think it's right and I would ask Cadwalader please correct me if I mis-speak, but I think they filed an amended plan and I think that the amended plan contained the economics which this was (indiscernible) you know, sort of everybody still waiting to hear what the plan treatment yield is. It was promised very long ago and I think that's reflected in the amended plan of reorganization, so I don't think there is really anything relevant to the debtors' restructuring on the Committee action settlement that is in the category that (indiscernible) again just remembering that the Court has been very mindful of not unfairly prejudicing people in the future if this falls apart.

I think discovery entirely among defendants would be truly without prejudice.

THE COURT: All right. Folks, I'm not ruling or addressing the broader point Mr. Zensky made. I am, however, ruling that I see insufficient basis for change in my earlier ruling and my earlier ruling on this issue stands.

Next issue. Is that examiner-related issues?

MR. DAHAN: Yes, Your Honor. Israel Dahan for the debtors again.

Your Honor, I think again at the December 11th hearing was very clear by saying that I am not now authorizing discovery and to any of the matters that were looked into by the examiner, could be I never will.

You know, we tried to outline on Page 5 of our letter some of the document requests that we've been asked for and any concern that we believe topics that are not, as Mr. Wissner-Gross they tangibly relate to exam issues, but in fact, issues specifically addressed by examiner. The one that obviously sticks out to me is the one regarding reserve where the examiner made it clear that he had not uncovered anything unusual about the process by which the debtors will address the continued inclusion or deletion of litigation and reserve on the plan.

A lot of the sort of whether or not Mr. Cooper has some sort of independence or not, and looking at visual aid it shows I think the examiner touched heavily on Mr. Cooper in his report. And (indiscernible) is requesting we want all documents relating to the examiner and the examiner report.

So we, you know, in the first instance we just believe it's their requests are totally contrary to what Your Honor ruled at the December 11th hearing. You know, and more importantly, I think with respect to any questions as to, you know, Mr. Cooper or other members of the litigation committee, all those three individuals have been submitted

the retention application. We reported full disclosure to the Committee and which were hopefully approved by the Court and therefore we think that, you know, going into further looking into their business -- past business relationships and based on any time they ever did any business or any of the members of the financing party defendants is just, you know, totally irrelevant and a mere fishing expedition.

So we just think it's a topic that is not relevant to this 9019 motion, Your Honor.

THE COURT: All right. Anybody else before I give Mr. Wissner-Gross a chance to respond?

MR. ZENSKY: Yes, Your Honor. It's Mr. Zensky of Akin, Gump, Strauss, Hauer & Feld.

I agree with the comments that Mr. Dahan said. I just want to expand on them.

With respect to the last point that he raised, while this was not addressed in the text of Mr. Wissner-Gross's letter, it was included on his chart, so if I could respond briefly, with respect to the business relationship or the fishing expedition, as Mr. Dahan called it, between any financing party defendant and Mr. Cooper, the request that has been made to the financing party defendants defines certainly my client as leverage source and all officers, directors, employees, agents, advisors, attorneys, and affiliates, so that would be hundreds of investment

professionals and outside professionals; and ask with no time limit whatsoever if there has ever been any dealings from the beginning of the world to today with Mr. Cooper or anyone else in the litigation subcommittee so we think it's grossly overbroad and there's no basis to ask for that.

If they have something in mind, they should ask about it. And if not, that is inappropriate in the context of the exercise we're engaged it.

With respect to issues that the examiner has already addressed, Your Honor did rule that we were not going to go down the road of doing discovery of that and Mr. Wissner-Gross has asked explicitly for numerous topics from the financing party defendants in that regard. He has asked for documents regarding litigation reserve that was covered by the examiner. He asked for documents about the TPG offer that apparently was made to the debtors during the time that equity sponsors were being considered. He has asked explicitly for documents about the examiner report itself, and also listed these as deposition topics.

And in a related vein, although not explicitly covered by the examiner report, we've been asked to provide discovery about adequate protection payments and about the potential proposal or a proposal by Reliance.

Again, this was actually something you did address at the December 4th hearing and I believe you said whether

not redline duty (sic) applied to Luxembourg Law, some may come back to me if they think the debtors are not living up to their redline duties. You didn't say let's go take discovery on this issue.

So there are a host of issues that discovery has been asked for of the financing party defendants both document wise and deposition wise, which explicitly fall under the examiner rubric and other topics which have utterly nothing to do with the 9019 and at best have something to do with the plan process.

THE COURT: Okay. Mr. Wissner-Gross.

MR. WISSNER-GROSS: Yes, Your Honor. Thank you.

Let me just start by saying that our goal is not to redo what the examiner looked at and we're really mindful of Your Honor's comment about not permitting discovery as to what the examiner had done, but the examiner, just for purposes of just thinking about the scope of what he did, he did not conduct any depositions. For example, with respect to Mr. Cooper, who I'd like to speak to for a moment or two, he did not interview Mr. Cooper with counsel for the Committee present and at best it was an interview on subjects that were within the scope of what he was authorized to do, which was fairly circumscribed exercise with a limited budget under a limited time frame.

In the case of Mr. Cooper, who was scheduled to be

deposed on Monday, who is, as Your Honor has noted, an important person we should depose first among the debtor witnesses, and who, based on his own affidavit or declaration of support of the 9019 motion, appears to be a central player for the litigation committee and appears to be the only individual on the supervisory board who is reportedly independent.

It seems to us that it's critical for us and it's important for the Court to have a full and thorough examination under oath with proper document discovery as to, for example, whether Mr. Cooper in fact had any prior business relationships with any of the financing party defendants.

And this is not just pure speculation, Your Honor. In the course of my preparing for his deposition, which I'm in the process of doing, I came across a website for a company named Cala Equity Partners (phonetic) of which he is -- he was a defined principal and co-owner of that, and the website indicated that it managed capital assets of $200 million with investors including Citibank.

Now, I don't know when he ended his relationship, if he did, with Cala Equity Partners. I don't know what, you know, the extent of his relationship -- business relationship was with Citibank, whether it ended before he founded his company named Care Management, which at his deposition last

summer is that he founded that company in July of 2008, but I think it's critically important and important for Your Honor when you're assessing whether Mr. Cooper ultimately is probably the most important member of the litigation committee, you know, engaged in whatever process he engaged in determine whether to settle, whether he had a prior active business relationship, investment history with at least one of the financing party defendants with whom he chose to settle.

Now, I look to see, after I saw Mr. Dahan's representation that Mr. Cooper was approved by the Court, his retention, and I'm not aware of it, Your Honor. He did file an affidavit dated March 6th, 2009 which I have in front of me, which is three pages in length, in which he advised the Court that he had been unanimously selected to be a member of the supervisory board, but he states at the end of his declaration or affidavit that neither he nor the debtors believed that approval (indiscernible).

To my understanding there has never been in any filing with the Court -- and we looked and we haven't found it, I'm happy to be proved otherwise -- any disclosure by Mr. Cooper as to his existing or prior business relationships that normally would ultimately be required for an estate professional that they brought in and he has effectively within the CRO paid $150,000 a month.

And so -- and I'm preparing for his deposition. I'm not doing basic sort of Google research on this and seeing, well, what is his background, I was kind of was thunder struck that Mr. Cooper appears to have had, at least with one of the financing party defendants, a prior active business relationship.

So my concern, Your Honor, is that what I think is happening here, I think you need to step back and look at what the debtors and the funding parties are trying to do. What they want to do is anything that the debtor -- that the examiner may have touched on in passing, and I didn't go in the ambit of his assignment, they want to say, well, that's off limits. You can't explore any of the business relationships of Mr. Cooper or any of the litigation committee members of any of the financing party defendants even though that clearly couldn't be more relevant and germane to the issue of whether this group was (indiscernible) collusion or whether the only supervisory board member and litigation committee member was being proffered as the one who is somehow disinterest, in fact, was very interested.

And we really want to have an opportunity not to redo the examiner exercise, but to be able to take appropriate discovery within the limited time frame we have of issues like that, then we say we'll inform the Court full

record as to whether this, for example, this one member of the litigation committee is so important had a history with one or more of the people who are going to be settled, raising the substantial question of whether he should have recused himself.

As we learned in the Enron case as we dug a little deeper, we believe that he was required through his appointment at Enron to recuse himself from dealing with these kind of litigation issues with investors in I think Cala Equity Partners that presumably included Citibank.

But, Your Honor, I think the point here is that we have a limited time to do discovery. I fully intend to be very practical and efficient in terms of what topics we explore. But I don't think it's appropriate for the other side to say, you know, pick up their hand and say the examiner mentioned something in passing in the report, he looked at it, you have no right to examine it.

On the other -- briefly, on the other topics that the other side has identified, such as the PBG offer and things of that nature, adequate protection payments, which are not even within the ambit of the examiner's report, our only goal is to take very limited discovery on those topics and inquire to the extent that the financing party defendant attempted to influence the debtors in any way that we think was a collusive nature and inappropriate where we were not

privy to those discussions.

I have no intention, given the time we have, to reopen any of that. I think the more important point is that we shouldn't be precluded from taking brief discovery on topics of that nature.

But my fundamental point, Your Honor, is that I don't think it would be appropriate or fair to the Committee or the finance party defendants or the debtors to stick up a stop sign and say, oh, on Page 30 the examiner made reference to such-and-such a point, therefore you can't ask any questions, particularly when the examiner didn't mention anybody with us present and nothing was done under oath.

THE COURT: All right. Anything --

MR. HUEBNER: Your Honor, can I have your ear for twenty-five seconds, literally, just to respond?

THE COURT: Yeah.

MR. HUEBNER: Mr. Wissner-Gross keeps sounding very reasonable saying things like "very limited," "very targeted." The comment that's not remotely what his document requests say. In fact, they're outrageous and they say things like all documents concerning any efforts by the debtors to obtain their reserve on the claim; all communications with the debtors concerning adequate protection payment; all -- and this is heard by every FPD -- all documents relating to any relationship with any FPD and

any of their agents, and any of Cooper, Gallagher, or McShea (phonetic).

So if there were the highly targeted, highly narrow, directly relevant, I'm-a-good-guy stuff that we were hearing orally, we would have been served with a very different document request. And the problem is, as Mr. Zensky laid out, you know, the document request says all documents relating to, and then lists topic after topic after topic that have no relevance and certainly even if some conceivable theory were relevant, the burden on us is crazy.

If Mr. Wissner-Gross thinks it's appropriate and the Court agrees to ask Mr. Cooper about his relationships with FPDs, the Court will rule on that, but to say that I have -- and I never heard about this myself until a few minutes ago. To say that each FPD has to go figure out in its entire institution any relationship that any FPD, let alone itself, has with Mr. Cooper is insane. I don't even know how I would do that.

So again, the issue is that, you know, when you say out loud, I want to be able to ask Mr. Cooper about his connections to FPDs, that doesn't sound crazy. The problem is, that bears no relationship to the document request that we actually requested as conference to protect ourselves from.

MR. WISSNER-GROSS: Your Honor, if I can very

briefly reply to that?

THE COURT: Yeah.

MR. WISSNER-GROSS: I asked -- in a sense, I do agree with Mr. Huebner that, you know, there are more efficient ways of going about this and I have asked the debtors to have Mr. Cooper provide that information, but Mr. Dahan's position, at least at this point, is we don't think it's relevant, we think it's sort of a redo of the examiner's report, and we'll send it back but we're not sure our client has agreed to provide it to you.

So if we can get that information from Mr. Cooper, in the first instance, who his being deposed on Monday, that obviously may obviate the necessity of me -- of my requesting the financing party defendants for further discovery on this.

But having said that, I think that on other topics that Mr. Huebner just identified such as the reserve-type issues, we've had discussions, we tried to negotiate in good faith, and the position to this point of the finance party defendants is we're not giving you any of that, so we didn't get to the point of trying to narrow some of those.

Of course I'm perfectly prepared to meet and confer in good faith on some of the subsidiary issues like the reserve or the rights offering, but narrow the scope of things. But for purposes of Monday, which is what I'm focusing on with Mr. Cooper's deposition, the most credible

thing obviously is being able to fully explore with him the full advent of his background and what he did.

MR. DAHAN: Your Honor, Israel Dahan. If I could possibly reply.

First of all, I think there's two separate issues here. There's obviously the document request and there's obviously the deposition.

We do feel that the topics in general are relevant and have been addressed by this Court or the examiner. Although putting that aside, it wasn't until about two hours before this conference that I first got called by Mr. Wissner-Gross about possibly, you know, resolving some of these questions and issues through the deposition as opposed to the, quote, "all documents" on this topic. Until now we've been very focused on for me to have to go to Mr. Cooper and all the members of the litigation committee and have them pull any documents that would reflect their relationships with any financing party defendant, obviously we were very disturbed by a request like that.

Whether or not this could be resolved because Mr. Wissner-Gross could ask two questions at deposition to Mr. Cooper, how was your relationship with Citibank as to Cala Equity Partners, again, I didn't have a chance to reach Mr. Cooper whether or not we could, you know, are allotted different questions and on the new request we only got served

late last night.

But I think fundamentally, from the document production perspective, we find this extremely onerous and irrelevant. Whether or not on this topic maybe there could be answers through a little bit of probing at a deposition if Your Honor feels it necessary, that may be a possible resolution to it, but clearly from a document production perspective this would be an enormous burden and on this topic as well as all the other examiner-related topics.

MR. WISSNER-GROSS: Your Honor, just to very briefly respond, I don't want to ask Mr. Cooper at his deposition these questions. Mr. Weisfelner asked him some similar questions last summer. His answer frankly, Your Honor, they told me was, I don't recall any basic relationship with a financing party defendant. Based on the investigation I've conducted, just, you know, anticipation of his deposition, I've identified concrete examples of direct active business relationships with at least Citibank.

I really want documents from him. I don't want to ask him questions where he says, I don't recall, maybe, let me check my records. And we want to do this the correct way and I do agree with Mr. Huebner that it's probably more efficient if we got all the production from Mr. Cooper and if for some reason he says, you know, I haven't been involved in Cala Equity Partners for a year, I don't think I have any

files, well, for sure Citibank has been identified on the print that I have in front of me that they're on the Cala Equity Partner website identified as a prominent financial invested part of the capital commitment of $200 million with a company that Mr. Cooper is one of the four owners of.

So I'm happy to try and first get at that with Mr. Cooper. I really think the proper way of doing this, as in any case, is to get the documents so that we can test Mr. Cooper based on the documents. And if he says he doesn't have them, hasn't been involved in, he doesn't leave any papers in his office or anything before his current engagement, then maybe we need to go to Citibank, some of the financing party defendants to say, well, what do you have on this, so that we can at least get before Your Honor a full record as to whether in fact Mr. Cooper, who was never subject to any approval by the Court before he was retained, is truly disinterested, because we think he isn't.

THE COURT: All right. Everybody sit in place for a second.

(Pause in proceedings.)

THE COURT: On this issue number five, items not explored in the examiner's investigation, I'm not going to authorize redoing the examiner inquiry. But that's not the real issue here.

The issue, although you folks are dancing around it,

and nobody to my memory has articulated it in exactly this fashion, is the extent to which otherwise appropriate discovery is circumscribed by the fact that it overlaps with examiner areas of inquiry. And as a general matter, I'm ruling that I'm not going to authorize the Creditors' Committee to do a do-over of the examiner's inquiry, but I'm also ruling that otherwise appropriate discovery relevant to the issues as to whether or not I should approve the 9019, and whether or not it's in the best interest of the estate, not by the way a decision based on business judgment but on the best interests of the estate, is otherwise appropriate and not circumscribed, because if it's otherwise appropriate and not circumscribed, it's okay.

The practical issue we're faced with here and the one upon which you spent the most time is, in reality, an issue as to the extent to which discovery is otherwise appropriate, because if Cooper has a professional or personal relationship or a friendship with any of the settling defendants, that is perhaps not necessarily relevant at trial, but within the grounds of potential relevance that makes it fair game for discovery, as applicable or arguably applicable, most obviously, to collusiveness.

Now, for that reason, I'm going to permit oral questioning of Mr. Cooper on any professional or personal relationships or friendships he has with any of the financing

party defendants, any of the parties who's on the other side of the settlement upon which he weighed in.

So, Mr. Wissner-Gross, if you want, you can ask Cooper questions of that character when you're deposing him next week.

The real issue, from my perspective, and where the rubber is going to hit the road on this, is the desired document discovery that you want to precede that deposition and/or that you want to take in connection with that deposition. Now, for a guy of Cooper's age, who has been at this for decades, the desired document production raises extraordinary concerns on my part vis-a-vis potential breadth and burden. And I can't authorize any document discovery that asks him, by way of example, to produce any documents he has concerning professional relationships he or anybody he was associated with had with any of the financing party defendants or any bank or financial institution or any variance of that.

In fact, while I'm not testifying, but because my experience over forty years informs the exercise of my discretion on matters of this character, there was a time, possibly decades ago -- well, I know it was decades ago, but I don't know the extent to which it's less than decades ago, Mr. Cooper was associated with a company called Zolfo Cooper & Company, and at least in cases on my watch, Zolfo Cooper

was a financial advisor to secured lenders.

Now, back in those days, secured lenders were usually banks, and, you know, participations, while present, were not as prevalent as they are now, so it's at least possible that back in the seventies or eighties he was, you know, had relations with banks.

You're going to be allowed to ask about that and you're going to be allowed to ask him questions about whether, in more meaningful time periods, like the last ten years or something, which I say by way of example rather than ruling, you know, he still has relationships with any of the people who the debtors or the Committee are suing.

But I am not going to authorize wholesale discovery document production discovery into what could be forty or forty-five years of business experience without something much, much more focused. So document production from Cooper vis-a-vis his relations with banks or hedge funds that may be part of the financing party defendant group, or some variant of that, is denied without prejudice at this time.

But if it turns out in the deposition that document production as to something focused where Mr. Wissner-Gross has some reason to believe that something is there, and Mr. Cooper says, I don't remember it, and Mr. Wissner-Gross says, look, I got a document that makes it seem that you did, my denial without prejudice may cause me later on to rule that

appropriate followup is okay, even if it requires making Cooper come back after that's done.

So the potential abuse, burden, expense, time delay of the broad brush and free ranging discovery that's requested on the document side is plainly inappropriate and I'm not authorizing it now.

If after you depose Cooper and it looks like he's playing rope a dope with you on this, I'm willing -- and I of course have no reason to believe he will, but if that turns out to be the case, then you can renew your request and I'll give it a fresh look. That's my ruling on that issue.

Next?

MS. MARTIN: Your Honor, Linda Martin. Just to clarify as well, you're not looking for that kind of discovery from the FPDs either, right?

THE COURT: At this point, that's correct, but also without prejudice to renewal if it turns out that there is focused discovery that later turns out to be necessary and appropriate.

MS. MARTIN: Thank you, Your Honor.

MR. DAHAN: Your Honor, Israel Dahan.

I take it Your Honor is working off the letter of Mr. Wissner-Gross, which at this point I think we've run into deposition notices.

THE COURT: That's right.

MR. DAHAN: And on the letter on Page 5 is one additional topic that we just weren't sure, given the attached exhibit of Mr. Wissner-Gross, it was not something that they're still seeking or not until we put in our letter that it relates to personal diaries and calendars, and that's on Page 5 of our letter, Topic 4.

On that subject, you know, it's our understanding unless Mr. Wissner-Gross corrects me if I'm wrong, that they are still -- they are still seeking for us to produce the personal diaries and calendars of the three members of the litigation committee, two of which have businesses outside -- engagements outside of Lyondell, and therefore their calendars over a seven-month period would have to reflect numerous meetings and calls on a host of issues that they're in as counsel they'd first have to delete and redact before we even get to see their calendars to see what's Lyondell related and then what's even settlement and adversary proceeding related, and we just think that the personal diaries could reflect when there was a meeting or a phone call about a settlement or adversary proceeding when they're going to be deposed and could be asked about such meetings is simply inappropriate and extremely burdensome.

And we also offered that they said they want to just know when there were meetings, we would be happy to provide a list of meetings that took place by the litigation committee

about settlement or the adversary proceedings to the extent they weren't able to get sufficient information at the depositions.

But we think that those proposals would make it, you know, satisfactory to avoid having the debtors go through this extreme time consuming and burdensome process of looking through seven months of diaries and calendars because it's extremely senior executives who have many, many meetings and phone calls.

THE COURT: Mr. Wissner-Gross doesn't need to respond on this.

Mr. Dahan, in forty years of doing this stuff, I've never seen a party get a get-out-of-jail free card on production of relevant entries in a calendar or a diary. You can redact. For the life of me I don't understand why it requires two separate people to do it.

If, as Mr. Wissner-Gross may find it more convenient to get a list, if he's interested in getting a list, he can have a list instead, but if he wants to see the diaries or the calendars or whatever they are, he's entitled to the relevant entries in them. You're of course allowed to redact everything else, but the fact that you're looking for absolution on something like this just is incomprehensible to me. If he wants it, he gets it.

MR. WISSNER-GROSS: Your Honor, Sigmund Wissner-

Gross. I think the only other topic open issue is the depositions and the number of depositions.

UNIDENTIFIED: Can we interrupt for one second though about lawyers time entry requests of the financing party defendants? Because I don't think I was --

MR. WISSNER-GROSS: Before we get on that, Israel, you can correct me if I'm wrong, but I believe that the debtors are in the process of making available to us time entries, albeit redacted, that were provided to them by various of the parties that were entitled to have their fees reimbursed by the estate so we, I think, were working that out with the debtors and I would like to see if we can make progress and resolve that before, if necessary, having to tee that up for you guys, Marshall.

MR. HUEBNER: Okay. Yeah. To be clear, we told the debtors yesterday, just so the Court knows as well, that we were fine with them re-forwarding to you any and all time entries that were originally circulated under 17C of the DIP order. So we don't have a problem with that, just giving them the document requests was a little different than that and would clarify now that that's the approach we're taking, at least for the present.

Okay. I'm sorry. I didn't mean to interrupt.

MR. WISSNER-GROSS: Your Honor, on the issue of deposition notices, here's my sort of a bit of a quandary.

We obviously -- we noticed more than ten deposition originally and my friends for I think both Mr. Havilas (phonetic) and Mr. Dunn (phonetic) reminded me that absent court approval we could only notice ten, so we scrapped the nineteen and we reissued notices for ten and we were beginning with Mr. Cooper, as Your Honor had recommended.

Once we get past Mr. Cooper -- and this is on Page 11 of my letter, Footnote 16 I set forth who the balance of the initial depositions are. You'll see that, with the exception of Mr. Cooper and also possibly seeking to take to litigation three members and possibly two of the consultants to the litigation committee. All the rest of the potential witnesses are bridge lenders or ad hoc members, Weber, Source, and Aries (phonetic), and I haven't gotten their -- I haven't had any documents produced from the bridge lenders yet.

But I have a sneaking suspicion that when I get to the first deposition to Weber as far as Aries (sic), I am going to be told by the deponent that anything he or she knows came from counsel; that to the extent there are any intents to communications regarding settlement of the Committee's clients, that's all privileged because any information came from their counsel; and that quickly see that the right people to depose on this are the attorneys.

And I have tried to avoid keying up those

depositions of attorneys at the outset in the hope that the document production and perhaps the beginnings of deposition would indicate that it's not necessary, but my concern is this. We have ten depositions that were allocated without court approval for more. I'm damned if I do and I'm damned if I don't. If I don't at least try to take some of these depositions of the bridge lenders, I won't know what I think is ultimately going to be the case, which is that I should really depose the lawyers who were the ones who actively engaged in these discussions.

So for present purposes, Your Honor, all I would ask for is that we are not restricted to ten depositions. Let us get the documents produced by the financing party defendants, which we haven't gotten. When we get the balance of the documents that Mr. Dahan says that the debtors will be producing -- they haven't produced any documents yet that reflect any negotiation of the settlement that occurred, we haven't received anything of that yet; and if necessary, I would suggest this one is probably better off to be tabled to be revisited with Your Honor.

What we did is we scheduled the depositions to go through the 20th of January with a view that our goal is to complete all depositions by January 28th, so I'm assuming once I get this initial document discovery taking the beginnings of deposition discovery we'll be much better

informed as to who else we truly need to depose to complete a proper record. But I don't think it will be fair or appropriate given the size of this case and the import -- the issues at play for us to be restricted to merely ten depositions, take them, guess which ones you want to take and if you guess wrong and it turns out you should have deposed a few attorneys, that's your tough luck.

Further, Your Honor, I noted the other side has commented that we each only have ten depositions during the adversary proceeding, but there were a number of depositions that were taken during Rule 2004 discovery. Each side had ten and that was forty depositions during the adversary proceeding and there were nine days of expert discovery.

I'm not looking for anything like that. I am committed, pursuant to Your Honor's instruction we do this in weeks not months, to complete all back discovery on this by January 28th unless there are problems with production, but I think it would only be fair to the Committee and it would best serve the Court to not set up an artificial limit to day to say we can only do ten depositions.

So my proposal is, Your Honor, I wanted to flag the issue for you. I think it's best if you reserve to revisit it after I actually get the productions from the financing party defendant and Mr. Dahan completes his discovery in accordance with Your Honor's rulings. We're asking after

we've taken the first deposition or two of the financing party defendant witnesses.

THE COURT: All right. Others want to be heard on this?

UNIDENTIFIED: Your Honor, (indiscernible). I mean, I guess if Mr. Wissner-Gross is simply saying is for now I understand I'm about for ten, I may be more, if so, will I have to come back before the Court and discuss it then, I guess I don't see a reason to say more except to note that, you know, we may have a view not only as to how many more, if any, he gets, but also what subject, a second deposition of a given entity would be appropriate or not given the first one, but it's hard to have a discussion in a vacuum when essentially he's withdrawn or deferred his request for the present, so I don't know what else I could add.

THE COURT: All right. Folks, I don't want to address this in a vacuum. On the one hand, the ten deposition rule appears for a reason, because as I remember from my experience before we had it, discovery would expand endlessly by nature of the way lawyers, including myself when I was one, have always behaved.

With that said, this is a matter of some fair importance. And if it turns out that people were reasonably taken and it later turned out that other people need to be taken, I can easily envision circumstances in which some

perhaps limited but additional discovery would be appropriate.

A decision of this character and what I will approve, either by nature of the person or the subject matter, is best not handled in the abstract. Instead, I will want to know who was deposed, what he or she said, what he or she was incapable of answering, and what additional information was needed, and from whom, and on what subjects.

I think that the best way to deal with it now is to consider the issue tabled or request for extension being denied without prejudice, with it being understood that it's simply not ripe for decision. And you guys will get to work and if need be, and you can't resolve it consentually, we'll have another conference call kind of like the one we're having today.

Okay, folks?

MR. HUEBNER: Your Honor, at the risk of something, can I ask two housekeeping questions --

THE COURT: Yeah.

MR. HUEBNER: -- that I think (indiscernible) has addressed.

MR. ZENSKY: And I -- this is David Zensky, Your Honor. I would like one clarification of one of your rulings, either now or after Mr. Huebner speaks.

MR. HUEBNER: Go ahead, Dave.

MR. ZENSKY: Your Honor, just to be clear so there's no need to get back on the phone, in your resolution of Topic 3, which was the alleged settlement negotiations between Mr. Weisfelner and the bridge lenders or some subset thereof, you were very careful to order reciprocal discovery and in category three, you said that the Committee would have to produce any report that they sent -- or excuse me, Mr. Weisfelner, any report that he sent on to his client, and would I be correct in assuming that that means either Mr. Weisfelner or other members of his firm or anyone acting on his behalf who would have reported the contents of the settlement dialog to the Committee members?

THE COURT: Yeah, but the report is subject to double entendres, and by report, as you use the expression, I don't know if you meant the same kind of report I am.

And again, and I forgot the exact words that were used, a mere recitation is what I wrote down in my notes as this argument went on. What Mr. Weisfelner or his associate working for him or his partner working next to him said to their committee about what the bridge lender said is okay, but what any of them said about their mental impressions as to that or their reactions to that, or their recommendations as to that, or their advice as to that is out of bounds.

And the underlying concept, the legislative history of this, is that what's sauce for the goose is sauce for the

gander. And also I did not say then but I will say now, because I don't know if this is going to be a productive exercise or not, but since you guys have talked about it so much I sense that some or all of you care about it a lot, is that if the Creditors' Committee doesn't want to press for that portion of this category that I've asked for, then I will drop the requirement for reciprocal discovery. I don't want arguments being that you opened the door and that we have even more discovery. If the Creditors' Committee decides it doesn't want it, then we'll just drop this subject.

MR. ZENSKY: Thank you, Your Honor. I didn't mean to suggest anything else by my poor choice of words. When I used the word "report," I understood it used exactly as you identified during the course of your decision.

THE COURT: Okay. Fair enough.

MR. HUEBNER: May I go now, Your Honor?

THE COURT: Yep.

MR. HUEBNER: Okay. So just two questions. Number one, and I apologize, because as Your Honor knows, I was technologically on mute for the first ten minutes and was not able to speak. I apologize. I would have clearly asked this question at the time.

On ruling number one, which is about communications about the settlement after December 4, Mr. Wissner-Gross, in

his presentation, suggested as a possible middle ground December 23rd when it was actually inked and filed and Your Honor ruled that there was no common interest and it all had to be shared.

The one question I have is once the settlement agreement was signed on December 23rd and filed, we're now turning all of our attention to preparing for a contested hearing where the FPDs and the debtors are on one side and the Committee is on the other side.

Obviously the Committee would love to be copied, literally CC'ed or have discovery available of every communication that goes back and forth as we prepare for this hearing, and I guess I'm wondering whether -- I can't imagine and am respectfully hopeful that was not intended because this would be a very bizarre litigation prep if we had to copy our adversary on our entire hearing preparation strategy and machine and documentation; whether, in fact, that Mr. Wissner-Gross at least suggested the possible middle ground, that December 23rd when the agreement was signed and executed and filed is not the right cutoff date because after that all we're doing is preparing for a hearing where clearly we are collectively totally adverse to the Committee and preparing for an actual hearing before Your Honor.

I just don't know how we prepare if we have to CC the Committee every time we have a strategy session or what

should we do with this witness or who is doing that deposition and we have to copy our adversary.

THE COURT: Mr. Wissner-Gross, you want to comment on that?

MR. WISSNER-GROSS: Yes, Your Honor. I thought you already ruled quite explicitly that until Your Honor approves the 9019 motion, that there is no common interest and that all of those communications should be discoverable by the Committee so I think that was the import of your ruling and I don't see any reason to revisit the subject.

MR. HUEBNER: But see, we're talking now about prep for the hearing, not -- so you're saying you should come to every meeting we have to prepare our litigation --

THE COURT: Gentleman, this is not a -- the English parliament. I don't want you arguing or asking questions of each other.

MR. WISSNER-GROSS: Your Honor, I'm done.

THE COURT: I did not address this orally in my ruling, but I thought about it when I was reading the various letters. I am not of a mind to require copying the Creditors' Committee on any communication that goes back and forth between the debtors and the financing party defendants, but I do not believe that there is anything inherently privileged under the common defense or common interest privilege that would protect any such communication.

And frankly, I don't muchly care about any institutional concerns in protecting communications between people who were and still are legally adverse who have decided to settle a controversy if I ultimately approve it, but who will once more be in an adversarial position if I don't.

The debtor and the financing party defendants should assume, if they want to caucus with each other, if they want to say anything, that their communications are not protected in the event that there is any further need for examining any of them.

With that said, I am not going to impose a duty under any kind of continuing discovery obligations to copy the Creditors' Committee on any such communications if they take place; and if the Creditors' Committee thinks that it wants to inquire into that area, while it will not be proscribed from doing so on privilege grounds, it's going to be at the risk of getting me, I'll try to use a more elegant word, annoyed.

I think you guys can understand the nuances associated with this ruling. It is not privileged, but I am not imposing a continuing duty of copying the Creditors' Committee on any such communications or inviting the Creditors' Committee to listen in on any phone calls. Okay?

UNIDENTIFIED: Yes, Your Honor. Thank you very

much. I'll actually have another housekeeping thing I wanted to ask you. I think it might be more gentlemanly to discuss it with the Committee directly.

THE COURT: Fair enough. All right. We've been on the phone for a little over two hours, folks. Is there anything else?

MR. WISSNER-GROSS: Not from the Committee's perspective, Your Honor.

THE COURT: Anyone else?

(No verbal response.)

THE COURT: All right. Have a good afternoon. We're adjourned.

(Proceedings concluded at 3:01 p.m.)

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CERTIFICATION

I certify that the foregoing is a correct transcript from the electronic sound recording of the proceedings in the above-entitled matter to the best of my knowledge and ability.

_____ January 8, 2010

Lisa Luciano AAERT Cert. No. 327

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